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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,560	09/03/2003	Roman S. Ferber	HOME 0698 PUS	5074
22045	7590	05/10/2006	EXAMINER	
BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075			THANH, QUANG D	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/654,560

Applicant(s)

FERBER ET AL.

Examiner

Quang D. Thanh

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 September 2003.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-3 and 5-19 is/are rejected.  
7) ☒ Claim(s) 4 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/3/03.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 18 is objected to because of the following informalities: "the massager" lacks antecedent basis. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 8, 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Japan reference 7-28549. The Japan reference 7-28549 discloses a handheld body massager comprising: a transverse housing 1 (fig. 1) having a central axis and a massage region; a massage unit 2/6 oriented within the housing for imparting a massage effect from the massage region; a pair of elongate arms 5 (fig. 1) pivotally connected to opposed transverse ends 3 of the housing (fig. 3), such that the massage region is oriented therebetween, each arm having a handle (fig. 1) to be grasped by a user and being pivotal generally toward and away from each other (fig. 3); whereby the user may grasp each handle to urge the massage region against a surface of the user's body; wherein each arm pivots about an axis (fig. 3), and the pair of pivotal axes are generally parallel with each other and orthogonal to the housing central axis (fig. 1); wherein each arm pivots about an axis (fig. 3), and the pair of pivotal axes are generally

Art Unit: 3764

parallel with each other and are lying in a plane that is generally parallel with the massage region (fig. 1); wherein each handle has a first grip portion (proximal portion of the handle as shown in fig. 3) and a second grip portion (distal portion of the handle as shown in fig. 3); wherein the first grip portion of each handle is generally coaxial with the corresponding elongate arm (fig. 3); wherein the second grip portion of each handle is not parallel with the housing central axis (fig. 1).

4. Claims 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Clarke (2,168,975). Clarke discloses a handheld body massager (fig. 1) comprising: a generally U-shaped housing 7 generally lying in a central plane (fig. 3), the housing having a central portion with an inward facing massage region (fig. 3), and a pair of elongate arms 6a (fig. 6), each including a handle at a distal end of the arm (fig. 6); and a massage unit 11 oriented within the housing central portion for imparting a massage effect to the massage region (fig. 3); wherein each arm is connected to the housing central portion by a hinge 4 (figs. 1 and 4) for pivotal movement about an axis that is generally orthogonal to the central plane, so that a user may grasp each handle for urging the massage region against a surface of the user's body (best seen in fig. 1); wherein the massage region is generally orthogonal to the central plane (fig. 1), wherein the handle of each arm extends upwardly out of the central plane to enable the user to urge the massage region toward the user's lower back with minimal wrist flexing (figs. 1 and 6); wherein each handle is generally orthogonal to the central plane (fig. 6); and a pair of lock members 5 (figs. 2 and 4) to releasably fix the arms relative to the housing for preventing rotation at the pivot joint (col. 2, lines 1-7).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 5-19 are rejected under 35 U.S.C. 103(a) as being unpatentable Naruse et al. (6,332,873) in view of Matsuura (JP 5-345006).

7. Re claims 1-3 and 5-6, Naruse et al. discloses a handheld body massager comprising: a transverse housing 2 (fig. 4c) having a central axis and a massage region; a massage unit 1 oriented within the housing for imparting a massage effect from the massage region (fig. 4c); a pair of elongate arms 20 (fig. 5) connected to opposed transverse ends of the housing (fig. 4c), such that the massage region is oriented therebetween, each arm having a handle 4/3 (fig. 4c) to be grasped by a user and being pivotal generally toward and away from each other (fig. 5); whereby the user may grasp each handle to urge the massage region against a surface of the user's body; except that it does not disclose that each arm pivots about an axis and the pair of pivotal axes are generally parallel with each other and orthogonal to the housing central axis and it lacks clutch or locking mechanism for maintaining a pivotal orientation. However, Matsuura teaches a handheld massager comprising an arm handle 1 pivotally connected to the housing 2 (fig. 1) via a clutch or locking mechanism (fig. 3) for maintaining a pivotal orientation of the arm relative to the housing. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to

Art Unit: 3764

modify the device in the Naruse et al.'s reference, such that each of the arm handle is pivotally connected to the housing by means of a clutch or locking mechanism, as suggested and taught by Matsuura, for the purpose of providing extreme easiness in handling the device by allowing the varying of an angle between the axial direction of the arm handle and a surface to be treated to match a part to treated (see abstract).

8. Re claims 7-12, Naruse et al. further discloses one of the arms 20 includes a power switch 8 (fig. 1) operating in communication with the massage unit for regulating power to the massage unit; wherein each handle has a first grip portion 4 and a second grip portion 3 for permitting a user to select a desired grip orientation; wherein the first grip portion 4 of each handle is generally orthogonal to the (height of) corresponding second grip portion 3 (fig. 4c); wherein the first grip portion 4 of each handle is generally coaxial with the corresponding elongate arm (fig. 2); wherein the second grip portion 3 of each handle is not parallel with the housing central axis; (fig. 2); wherein the first grip portion of each handle is generally coaxial with the corresponding elongate arm, and generally orthogonal to the corresponding second grip portion, so that the user may grasp the first grip portion of each handle to pull the massage region against a surface of the user's body, and the user may grasp the second grip portion of each handle to push the massage region against a surface of the user's body.

9. Re claims 13-17, Naruse et al. discloses the claimed invention having all the features, except for each arm being pivotally connected to the housing by a hinge, and pair of lock members for preventing rotation at the pivot joint. However, Matsuura teaches a handheld massager comprising an arm handle 1 pivotally connected to the

Art Unit: 3764

housing 2 (fig. 1) via a clutch or locking mechanism (fig. 3) for preventing rotation at the pivot joint and maintaining a pivotal orientation of the arm relative to the housing. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device in the Naruse et al.'s reference, such that each of the arm handle is pivotally connected to the housing by means of a clutch or locking mechanism, as suggested and taught by Matsuura, for the purpose of providing extreme easiness in handling the device by allowing the varying of an angle between the axial direction of the arm handle and a surface to be treated to match a part to treated (see abstract).

10. Re claims 18-19, Naruse et al. discloses control 8 (fig. 2) and Matsuura discloses control 10 located within the handle (fig. 1). With respect to "on/off" and "variable speed" controls, Official notice is taken that it is well known in the art of massager to use switches for controlling the power and the speed of the massager. Therefore, it would have been obvious to one of ordinary skill in the art to include such switches in order to turn on or off the power and to regulate the speed of the massaging action as desired.

***Allowable Subject Matter***

11. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Conclusion**

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Matsumoto '002 discloses a massage device having a handle pivotally fixed to the arm. Sutherland '743 discloses a kneader.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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